

No. 77-1849

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1977

CHICAGO SHERATON CORPORATION, an Illinois
Corporation,

Appellant,

vs.

SEYMOUR ZABAN, et al.,

Appellees.

Appeal from the Supreme Court of Illinois.

MOTION TO DISMISS OR AFFIRM

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The defendants-appellees in the above-entitled cause respectfully move this Court to dismiss this appeal on the grounds that the questions presented are so insubstantial as not to need further argument. Alternatively, the defendants-appellees move that the judgment of the Illinois Supreme Court be affirmed since it is clearly correct.

ARGUMENT

I.

THE CASE PRESENTS NO SUBSTANTIAL FEDERAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT BECAUSE THE TAXPAYER HAD AN AVAILABLE REMEDY TO CHALLENGE THE ALLEGED OVERASSESSMENT.

The Illinois Supreme Court has held that a taxpayer has no statutory or constitutional right to participate in Illinois real estate Certificate of Error proceedings. (App. A, p. A6) Rather, the Certificate of Error proceeding is one that involves only the tax officials and the court. The taxpayer's remedy is by way of paying the allegedly excessive taxes under protest, and then objecting in court in a proceeding separate from the Certificate of Error proceeding. Ill. Rev. Stat. 1971, ch. 120, secs. 675 and 716.

This Court has held on numerous occasions that due process requires only that the taxpayer be heard at some stage of the taxing process before the tax becomes final:

"... if the legislature of the state, instead of fixing the tax itself, commits to the subordinate body the duty of determining whether, and in what amount, and upon whom the tax shall be levied, due process of law requires that at some stage of the proceedings, before the tax becomes irrevocably fixed, the taxpayer must have the opportunity to be heard, of which he must have notice whether personal, by publication, or by some statute fixing the time and place of hearing." [*Turner v. Wade*, 254 U.S. 64 at 68, 41 S.Ct. 27 at 28, 65 L.Ed. 134 at 137 (1920).]

This Court has noted this holding in many cases. *Londoner v. Denver*, 210 U.S. 373, 28 S.Ct. 708, 52 L.Ed. 103 (1908); *Winona & St. Paul Land Co. v. State of Minnesota*, 159 U.S. 526, 16 S.Ct. 83, 40 L.Ed. 247 (1895); *Weyerhaeuser v. Minnesota*, 176 U.S. 550, 20 S.Ct. 485, 44 L.Ed. 583 (1900).

The taxpayer argues that *Central of Georgia Ry. v. Wright*, 207 U.S. 127, 28 S.Ct. 47, 52 L.Ed. 134 (1907) and *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 50 S.Ct. 451, 74 L.Ed. 1107 (1930) require reversal of the Illinois Supreme Court's holding. The taxpayer's reliance on these cases is misplaced. In *Central of Georgia Ry.* this Court held that even though a taxpayer did not comply with a statutory duty to "return" certain shares of stock for assessment purposes, the taxpayer still had a due process right to be heard at some time prior to the final fixing of liability, on the valuation issue. And *Brinkerhoff-Faris* held that a taxpayer was denied due process when the taxpayer was required by state court to seek an administrative remedy (as a prerequisite to a court hearing) which administrative remedy was never available. Neither case applies to the case at bar. The taxpayer merely failed to perfect its remedy to challenge the tax and thereafter attempted to create a remedy by misconstruing the Illinois Certificate of Error statute. Moreover, plaintiffs' suggestions (fn. 16, p. 8; p. 20, p. 22 of its Jurisdictional Statement) that it had no remedy at law because any Complaint it would have filed before the Board of Appeals would have been dismissed, is not substantiated by the record. Moreover, it is clearly erroneous: Under Illinois statutory law, the Board of Appeals does not even receive Certificates of

Error from the Assessor until *after* the Board has ruled on taxpayers' Complaints.

The federal due process law in this area is well settled and this case presents no substantial issue not previously decided by this Court. Accordingly, the appellees respectfully request this Court to dismiss or affirm this appeal.

CONCLUSION

Wherefore, appellees respectfully submit that the questions presented by this cause are so insubstantial as not to need further argument, and that the appeal should be dismissed. Alternatively, appellees respectfully submit that the judgment entered in this cause by the Illinois Supreme Court is clearly correct and should be affirmed.

Respectfully submitted,

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